

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PROPOSED
ARM 2.59.308 pertaining to)	AMENDMENT AND REPEAL
examination fees and the repeal of)	
ARM 2.59.307 pertaining to dollar)	
amounts to which consumer loan)	NO PUBLIC HEARING
rates are to be applied)	CONTEMPLATED

TO: All Concerned Persons

1. On December 3, 2009, the Department of Administration proposes to amend and repeal the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on November 23, 2009, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to wjohnston@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

2.59.308 EXAMINATION FEES (1) A consumer loan business shall pay the Division of Banking and Financial Institutions a fee in the amount of ~~\$300 a day~~ \$37.50 per hour for each examiner required to conduct an investigation or examination under 32-5-402 or 32-5-403, MCA.

AUTH: 32-5-401, 32-5-403, MCA

IMP: 32-5-402, 32-5-403, MCA

STATEMENT OF REASONABLE NECESSITY: In the 2009 session, the Montana Legislature amended the Montana Title Loan Act and the Montana Deferred Deposit Loan Act to provide that the division shall charge an examination fee of \$37.50 per hour instead of \$300 per day. It was more equitable to businesses to charge the actual number of hours worked by examiners instead of \$300 per day. For instance, in some cases, an examination took one day and two hours the next day. But the department was required to charge \$300 for the second day, instead of \$75.

Several of the businesses licensed with the department hold more than one license. For instance, some businesses are licensed as consumer lenders and title lenders, or consumer lenders and deferred deposit lenders. Some businesses hold

three licenses: consumer, title, and deferred deposit lender. The department calls this dual licensure.

This sets up a situation in which the department, in examining a dual licensee, would have to charge the licensee \$300 for the consumer loan portion of the examination, regardless of how long it took, and an additional \$37.50 per hour per examiner for the actual time spent examining the title loan or deferred deposit loan portion of the business.

In order to remedy this inequity, the department proposes to amend the rule on examination fees for consumer loan licensees to provide that the business shall pay \$37.50 per hour instead of \$300 per day. This will allow the department to charge dual licensees \$37.50 per hour per examiner for examinations and equalize the billing for all three types of licensees.

The amendment to this rule would likely result in a slight decrease in examination revenue to the department. The exact amount of this decrease is impossible to project because of the variables which determine the amount of time required to conduct consumer loan examinations. These variables include the licensee's compliance with applicable state law and rules since the date of the last examination as well as the amount and number of loans originated by the licensee, the completeness and accuracy of the licensee's records, and the organization of the licensee's files.

4. The department proposes to repeal the following rule:

2.59.307 DOLLAR AMOUNTS TO WHICH CONSUMER LOAN RATES ARE TO BE APPLIED, found on ARM page 2-5970.

AUTH: 32-5-104, MCA

IMP: 32-5-104, 32-5-201, 32-5-301, 32-5-302, 32-5-306, MCA

STATEMENT OF REASONABLE NECESSITY: The 2007 Legislature made significant amendments to the Montana Consumer Loan Act, which included the repeal of 32-5-104, 32-5-201(4), and 32-5-306(7), MCA. The purpose of ARM 2.59.307 was to set forth certain dollar amounts which were subject to change according the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items, 1967 = 100 compiled by the Bureau of Labor Statistics, U.S. Department of Labor. This rule is no longer necessary because all relevant statutes have been repealed.

5. Concerned persons may present their data, views, or arguments, concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to kosullivan@mt.gov. The data, views or arguments must be received no later than 5:00 p.m., December 1, 2009.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written

comments to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, MT 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to kosullivan@mt.gov. The requests and comments must be received no later than 5:00 p.m., December 1, 2009.

7. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 12 persons based on the number of consumer loan licensees which is currently 115 as of the publication of this notice.

8. An electronic copy of this Proposal Notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp.x>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to wjohnston@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State October 19, 2009.